act, as essential to the validity of the deed as the signing or sealing, and being a distinct requisite for validity, must be proved by the one claiming under the instrument. *Fain* v. *Smith,* 14 Ore. 82, 58 Am. Rep. 281; *Fisher* v. *Hall,* 41 N. Y. 416; *Boyd* v. *Slayback,* 63 Cal. 493. In the second case, the language used by the testator in his will regarding the deed, and his subsequent action in acknowledging the deed and placing it with his will were considered as clearly indicating his intention to make it then operative as his deed. For a very similar case see *Toms* v. *Owen,* 52 Fed. 417. See also 17 MICH. L. REV. 344 and references given there. There are misleading statements in certain cases cited in *Payne* v. *Payne, supra,* to the effect that the signing, sealing and acknowledging of a voluntary conveyance raise a prima facie presumption of its delivery. The language, however, was unnecessary to the decision of the cases cited and is impossible to reconcile with elementary principles of the law as to delivery.

EQUITY—UNCLEAN HANDS.—Plaintiff was a corporation giving chiropractic lessons by mail, and had built up its business by false, misleading, and fraudulent advertising. Defendant, a former president of the plaintiff company, started a rival institution and took with him a list of plaintiff's present and prospective pupils, and sent letters to them derogatory to plaintiff, and calculated to draw its pupils away. The defendant built up his business by the same kind of fraudulent advertising. Plaintiff asked for an injunction to restrain defendant from sending out any more such letters. *Held,* the plaintiff's unclean hands preclude equity from giving the relief asked. *American University* v. *Wood,* 128 N. E. 330 (Ill., 1920).

The court in the principal case lays down the broad proposition that equity will not aid a litigant in the promotion of a fraud on the public, although his wrong did not affect the private rights of the defendant, and had no necessary connection with defendant's wrong-doing, citing *Primeau* v. *Granfield,* 193 Fed. 911, in which, there being a suit to declare a trust and for an accounting between plaintiff and defendant, who were engaged in a fraudulent joint enterprise for the sale of worthless mining stock to the public, the court dismissed the bill, holding the plaintiff had not come into court with clean hands. The Trade Mark or Trade Name cases, 4 A. L. R. 32, note, in which plaintiff asks for an injunction to restrain an infringement, are the most numerous and important type in which the courts have applied the doctrine of unclean hands, as in *Worden* v. *California Fig Syrup Co.,* 187 U. S. 516, where an injunction restraining an infringement on the trade name, "Syrup of Figs," was refused, the court holding that the name was a fraud on the public, as the product contained no fig syrup, but was merely an extract of senna, and dismissed the bill because of the plaintiff's unclean hands. In *Memphis Keeley Institute* v. *Leslie E. Keeley Co.,* 155 Fed. 964, plaintiff asked an injunction to restrain defendants from administering their remedies, and to cancel the contract. The court found that the so-called "Gold Cure" contained no gold, although the sale of the medicine had been built up by representations to that effect, and held that as this

advertising amounted to a fraud on the public, equity would not interfere where plaintiff's hands were unclean. In both this case and the principal one the rule that the misrepresentation must be directly connected with the subject matter of the suit (*Shaver* v. *Heller,* 108 Fed. 821, 834), was considered inapplicable. In *Coca Cola Co.* v. *Koke Co.* (U. S S. Ct., October term, 1920), 41 Sup. Ct. 113, the court sustained an injunction against an infringement of the name "Coca Cola," in spite of the objection that the name was a deceit on the public. In reversing the conclusion in 255 Fed. 894, and modifying and affirming the holding in 235 Fed. 408, the court decided that there was no fraudulent advertising in the case, and that although the name was derived from a derivative of cocaine, and now, as a matter of fact, the drink contained no cocaine, yet the public asked for the beverage itself, and not for a drink with the expectation of getting cocaine in it. From a consideration of these cases it would seem that the Illinois court in its broad application of the rule was justified in principle, although none of the cases considered has stated or applied it so liberally.

EVIDENCE—TESTIMONY OF THE DECEASED GIVEN AFTER THE TIME OF THE ACCIDENT IS ADMISSIBLE AS PART OF RES GESTAE.—Statements made by the deceased after being shot that the defendant had attacked and robbed him, though made some time after the accident, *held* admissible as part of the *res gestae,* since there had been no opportunity to deliberate on the effect of the words. *Solice* v. *State* (Ariz., 1920), 193 Pac. 19.

The doctrine of *res gestae,* as a basis for the admission of evidence, may be summarized, in a limited sense, as the practice of admitting the entire collection of primary facts constituting the immediate and necessary field of judicial inquiry in the particular case. This may involve the admission of declarations and statements that might otherwise be classed as hearsay evidence, even though these statements may not have occurred at the time or at the place of the principal occurrence. A further inquiry into the exact nature of the doctrine of *res gestae* reveals the fact that it has been applied as a loose name covering several more definite rules for admitting evidence, the more important of which are spontaneous exclamations or statements, statements admissible under the verbal act doctrine, statements showing mental condition, and statements admissible as part of the issue under the pleadings, and others. This confusion of several distinct bases for the admission of evidence has in many cases led to confusion of the elements necessary for the admission of evidence of the type involved in the principal case, and more technically known as spontaneous exclamations. Spontaneous exclamations, as an exception to the hearsay rule, are admissible when, because of the element of the time of making such exclamations and the circumstances of making, it is evident that the words have been emitted spontaneously and without previous reflection on their effect. Untrustworthiness being the basis of the hearsay rule, it is the spontaneity of this particular form of *res gestae* that insures their truth and forms the basis of the exception. Hence the elements necessary for the presence of this guaranty